No. 12630

United States
Court of Appeals
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

CLARA-VAL PACKING COMPANY and CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION No. 679, AFL.,

Respondents.

Transcript of Record

Petition for Enforcement of Order of the National Labor Relations Board

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

EUGENE K. KENNEDY, ESQ.,

San Francisco, California,

Appearing on behalf of the
General Counsel, National Labor Board.

I. B. PADWAY, ESQ.,

420 de Young Building,
San Francisco, California,

Appearing on behalf of
Cannery Workers Union, Local 679.

VINCENT C. GIORDANO ESQ.,
President, Clara-Val Packing Company,

Morgan Hill, California,

Appearing on behalf of the Company.

United States of America, Before
The National Labor Relations Board
Case No. 20-CA-117

In the matter of

CLARA-VAL PACKING COMPANY

and

NORA E. STIERS, an Individual.

Case No. 20-CB-29

In the Matter of

CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION No. 679, A.F.L.

and

NORA E. STIERS, an Individual.

EXCEPTIONS TO THE INTERMEDIATE REPORT AND RECOMMENDED ORDER IN THE ABOVE-ENTITLED MATTER

Come now the above-named respondents, (As the Trial Examiner found and recommended that both respondents were guilty of unfair labor practices, we are authorized by the respondent, Clara-Val Packing Company, to state that they join in the exceptions to the Intermediate Report and Recommended Order herein), and each of them, and state there is manifest error in the Intermediate Report and Recommended Order herein, and object to and except to the Intermediate Report and Recom-

mended Order aforesaid, in this, to wit: the Trial Examiner duly designated by the Chief Trial Examiner erred in making and entering his findings of fact and recommendations thereto:

I.

Except to the finding of fact that respondent's Exhibit 1 contained an automatic renewal clause, Examiner's Report, Page 4, Line 15 to Line 30.

II.

Except to the finding that the contract was renewed or extended on March 1, 1948, within the meaning of Section 102 of the Act, Examiner's Report, Lines 31 and 32.

III.

Except to the finding that Stiers had been discriminated against and that the company was coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and that the Union had restrained or coerced Stiers in the exercise of those rights as contained in Examiner's Report on Page 4, Line 36, commencing with the word "since" and ending with the words "so finds."

IV.

Except to the findings that the activities of the respondents have a close and intimate and special relationship to trade, traffic and commerce among the several states, as more particularly contained in the Examiner's Report on page 5, Lines 13 to 19.

V.

Except to the suggested remedy commencing with Page 5 of Examiner's Report, Line 23 to Line 42.

VI.

Except to the conclusions of law commencing with Line 7 to Line 30 on Page 6 of Examiner's Report.

VII.

Except to the recommendations commencing with Line 35 on Page 6, continuing to Line 22 on Page 7 of Examiner's Report.

VIII.

Except to the cease and desist finding commencing in Examiner's Report with Line 25 on Page 7, and continuing through to Line 8 on Page 8 thereof.

Wherefore, respondents herein, and each of them, pray that the findings and recommendations of the Intermediate Report be not concurred in by the National Labor Relations Board.

/s/ I. B. PADWAY,
Attorney for Respondent Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL.

Received July 12, 1949.

United States of America, Before the
National Labor Relations Board
Case No. 20-CA-117

In the Matter of

CLARA-VAL PACKING COMPANY

and

NORA E. STIERS, an Individual.

Case No. 20-CB-29

CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION No. 679, A.F.L.

and

NORA E. STIERS, an Individual.

DECISION AND ORDER

On June 6, 1949, Trial Examiner Josef L. Hektoen issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto.[1]

Thereafter, the Respondents filed exceptions to

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[1]Pursuant to Section 203.33(b) of the National Labor Relations Board Rules and Regulations Series 5, as amended, these cases were consolidated by order of the Regional Director for the Twentieth Region (San Francisco, California) on November 30, 1948.

the Intermediate Report and supporting brief. The Respondents' request for oral argument is hereby denied because the record and the exceptions and brief, in our opinion, adequately present the issues and the positions of the parties.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief filed by the Respondents, and the entire record in the cases, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner not inconsistent with our findings, conclusions, and order, hereinafter set forth.

1. The Union expelled Nora Stiers from membership because she refused to honor a picket line which the Union had established at the plant of another company with whom the Union had a labor dispute. The Union then demanded that Respondent Clara-Val discharge Stiers, in accordance with the union-security provisions of their contract. The Union accompanied this demand with a threat to strike Respondent Clara-Val's plant. Respondent Clara-Val thereupon discharged Stiers on June 24, 1948.

The Trial Examiner found, and we agree, that the contract in question had been renewed in 1948 after the enactment of the amended Act, and therefore that Section 103 did not preserve the contract as a defense to the discharge. Accordingly, we agree with the Trial Examiner's conclusions that the union-security provision of the contract, executed

without an election pursuant to Section 9(e), did not satisfy the requirements of the amended Act; that the Respondent Clara-Val violated Section 8(a)(3) and 8(a)(1) of the amended Act by discharging Stiers because she was no longer a member of the Union; and that the Respondent Union violated Section 8(b)(2) in causing Respondent Clara-Val to discriminate against Stiers in violation of Section 8(a)(3).[2]

2. The Trial Examiner found that the Respondent Union, by causing Respondent Clara-Val discriminatorily to discharge Stiers, restrained and coerced employees in the exercise of the rights guaranteed by Section 7 thereby violating Section 8(b)(1)(A) of the amended Act.

Section 8(b)(1)(A) provides:

> It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (a) employees in the exercise of the rights guaranteed in Section 7 * * *[3]

We have found that there was in effect no valid agreement requiring Stiers to be a member of the Respondent Union as a condition of employment.

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[2]H. Milton Newman, an individual d/b/a H. M. Newman, 85 NLRB No. 132.

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[3]Section 7 provides in part:

Employees shall have the right to form, join or assist labor organizations * * * and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

Accordingly, she was entitled to exercise the right to engage in, or to refrain from engaging in, all the activities enumerated in Section 7 of the Act without restraint or coercion from either the Respondent Company (Section 8(a) (1) or from the Respondent Union (Section 8(b)(1)(A)). Because she exercised the right, guaranteed by Section 7, to refrain from engaging in such activities, the Union caused the Respondent Clara-Val discriminatorily to discharge her.

The legislative history of the amended Act establishes, as the Board has found,[4] that Section 8(b)(1)(A) was designed by Congress to eliminate not only the use by unions of physical violence and coercion, but also union threats of economic action against specific individuals in an effort to compel them to join or assist a union. Holding, however, that Congress did not intend a violation of Section 8(b)(1)(A) to flow automatically in all cases from a union's violation of Section 8(b)(2), the Board declared in the NMU case that "The touchstone of a strike which is violative of Section 8(b)(1)(A) is normally the means by which it is accomplished, so long as its objective is directly related to the interest of the strikers and not directed primarily at compelling other employees to forego the rights which Section 7 protects." (Emphasis added.)

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[4]National Maritime Union of America, et al., 78 NLRB 971; National Maritime Union of America, et al., 82 NLRB No. 152; Perry Norvell Company, 80 NLRB No. 47; International Typographical Union, et al., 86 NLRB No. 115.

The Present case falls squarely within the underscored exception. It involves union conduct which was directed primarily at compelling employee Stiers to forego the rights which Section 7 protects. That Section 8(b)(1)(A) prescribes the threat of the type of economic action in question, has already been decided in the Smith Cabinet and Seamprufe cases.[5] In both these cases a majority of the Board found that the mere voicing of a threat that employees who did not join the union would lose their jobs when the union organized the plant, was a violation of Section 8(b)(1)(A). And in the Julius Resnick case[6] the Board held that the mere execution of an illegal union-security contract restrained employees in the exercise of rights guaranteed by Section 7 of the Act.[7] In view of these decisions, in which our dissenting colleague joined, it would be anomolous to conclude that the actual effectuation of the threat, or enforcement of the illegal contract against a specific individual employee, did not likewise constitute restraint.

We cannot subscribe to the view of the dissent

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[5]Smith Cabinet Manufacturing Company, Inc., 82 NLRB No. 56; Seamprufe, Incorporated, 82 NLRB No. 106. (Chairman Herzog and Member Houston dissenting.)

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[6]Julius Resnick, Inc., 85 NLRB No. 10.

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[7]See also the numerous representation cases in which the Board held that an illegal security clause, "by its very existence acts as a restraint on employees desiring to refrain from union activity." Hazel-Atlas Co., 85 NLRB No. 215.

that the Union's action here was directed only to the employer. The discharge and the reason for it would inevitably become known to the other employees, and would coerce and restrain them to join the Union or retain their membership in it. We would not permit the Union to avoid responsibility for this inevitable and direct result of its action in procuring the discharge of a particular employee.

We conclude, therefore, that by causing Stiers to be discriminatorily discharged the Union restrained Stiers in the exercise of her rights guaranteed under Section 7 of the amended Act and thereby violated Section 8(b)(1)(A) of the amended Act.

ORDER

Upon the entire record in the case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondent, Clara-Val Packing Company, Morgan Hill, California, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Encouraging membership in Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, or in any other labor organization of its employees, by discharging any of its employees or discriminating in any other manner in regard to their hire or tenure of employ-

ment or any term or condition of their employment;

(2) In any other manner interfering with, restraining, or coercing its employees in the right to refrain from exercising the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Offer to Nora E. Stiers immediate and full reinstatement to her former or a substantially equivalent position without prejudice to her seniority or other rights and privileges;

(2) Post at its plant at Morgan Hill, California, copies of the notice attached hereto as Appendix A.[8] Copies of said notice to be furnished by the Regional Director for the Twentieth Region shall, after being duly signed by the Respondent Company's representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where no-

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[8]In the event this order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words: "A Decision and Order" the words: "A Decree of the United States Court of Appeals Enforcing."

tices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that such notices are not altered, defaced, or covered by any other material;

(3) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Decision and Order, what steps the Respondent Company has taken to comply herewith.

2. The Respondent, Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, its officers, representatives and agents, shall:

(a) Cease and desist from:

(1) Causing, by threatening strike action Clara-Val Packing Company, its officers, agents, successors, or assigns, to discharge or otherwise discriminate against employees because they are not members in good standing in Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, except in accordance with Section 8(a)(3) of the Act;

(2) In any other manner causing or attempting to cause Clara-Val Packing Company, its officers, agents, successors or assigns, to discriminate against its employees in violation of Section 8(a)(3) of the Act:

(3) Restraining or coercing employees of Clara-Val Packing Company, its successors, or assigns,

in the exercise of their right to refrain from any or all of the concerted activities guaranteed by Section 7.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Post at its offices, if any, at Morgan Hill, California, and wherever notices to its members are customarily posted, copies of the notice attached hereto as Appendix B.[9] Copies of said notice, to be furnished by the Regional Director for the Twentieth Region shall, after being duly signed by the Respondent Union's representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced, or covered by any other material;

(2) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Decision and Order, what steps it has taken to comply herewith.

3. Clara-Val Packing Company, its officers, agents, successors, and assigns, and Cannery Ware-

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[9]In the event this order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words: "A Decision and Order" the words: "A Decree of the United States Court of Appeals Enforcing."

housemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, its officers, representatives, and agents, shall jointly and severally make whole Nora E. Stiers for any loss of pay she may have suffered because of the discrimination against her, by payment to her of a sum of money equal to the amount she normally would have earned as wages from June 24, 1948, the date she was discriminatorily discharged, to the date of the Respondent Company's offer of reinstatement, less her net earnings during said period.

Signed at Washington, D. C., this 16th day of December, 1949.

PAUL M. HERZOG,

.....,

Chairman.

JOHN M. HOUSTON,

.....,

Member.

J. COPELAND GRAY,

.....,

Member.

[Seal] NATIONAL LABOR RELATIONS BOARD.

Appendix A

Notice to All Employees

Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not encourage membership in Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, or in any other labor organization of our employees, by discriminatorily discharging any of our employees or discriminating in any other manner in regard to their hire or tenure of employment, or any terms or conditions of employment.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the right to refrain from any or all of the concerted activities guaranteed them by Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a)(3) of the Act.

We Will make Nora E. Stiers whole for any loss of pay suffered as a result of the discrimination against her.

All our employees are free to become, remain, or refrain from becoming or remaining, members in good standing of the above-named Union or any other labor organization except to the extent that

this right may be affected by an agreement in conformity with Section 8 (a)(3) of the amended Act.

CLARA-VAL PACKING
COMPANY,
Employer.

Dated .....

By .....
(Representative) (Title)

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B

To All Members of Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, and to All Employees of Clara-Val Packing Company

Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not cause, by threatening strike action, Clara-Val Packing Company, its agents, successors, or assigns, to discharge or otherwise discriminate against employees because they are not members in good standing in Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, except in accordance with Section 8 (a) (3) of the Act.

We Will Not in any other manner cause or at-

tempt to cause Clara-Val Packing Company, its agents, successors, or assigns to discriminate against its employees in violation of Section 8 (a) (3) of the Act.

We Will Not restrain or coerce employees of Clara-Val Packing Company, its successors, or assigns, in the exercise of the right to refrain from any or all of the concerted activities guaranteed to them by Section 7 of the Act.

We Will make Nora E. Stiers whole for any loss of pay she may have suffered because of the discrimination against her.

. . . . . .

Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL.

Dated .....

By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

James J. Reynolds, Jr., Member, concurring in part, dissenting in part:

I concur in the finding of the majority of the Board that the Respondent Clara-Val violated Section 8 (a) (3) and (1) of the Act by discharging Stiers because she was no longer a member of the Union. I also concur in the finding that the Respondent Union violated Section 8 (b) (2) of the Act by causing Clara-Val to discriminate against

Stiers in violation of Section 8 (a) (3). However, I disagree with the finding that the Respondent Union also violated Section 8 (b) (1) (a) of the Act by causing Clara-Val to discriminate against Stiers.

Section 8(b)(2) provides that it shall be an unlabor practice for a labor organization "to cause * * * an employer to discriminate against an employee in violation of subsection (a)(3." (Emphasis added.) Section 8(b)(1)(A), on the other hand, provides that it shall be unfair labor practice for a labor organization "to restrain or coerce * * * employees in the exercise of the rights guaranteed in Section 7." (Emphasis added.) Thus, Section 8(b)(2) prescribes certain union activity directed at employers, whereas Section 8(b)(1)(a) prescribes other union activity directed at employees. It is the failure of my colleagues to observe this distinction which is, in my opinion, responsible for their erroneous conclusion that the conduct of the Respondent Union also violated Section 8(b)(1)(A).

[1]Our decisions imply the existence of this distinction. In the NMU and Perry Norvell[2] cases, the Board considered allegations in the complaints that by engaging in strikes the respective respondent unions violated Section 8(b)(1)(A) of the Act. In the NMU case the strike, like the Union conduct in the present case, violated Section

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[1]National Maritime Union of America, et al. (The Texas Company), 78 NLRB 971.

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[2]United Shoe Workers of America, et al. (Perry Norvell), 80 NLRB No. 47.

8(b)(2) of the Act. In the Perry Norvell case, it was not alleged, nor did it appear, that the strike violated Section 8(b)(2). In both cases the Board found that the strike did not violate Section 8(b)(1)(A). Yet in both cases Board acknowledged that all strikes, including the strikes in question, encroached upon the rights of employees guaranteed by Section 8(b)(1)(a) of the Act. In the Perry Norvell case, despite the effect of the strike upon the rights of employees guaranteed in Section 8(b)(1)(A), the Board stated that "the legislative history of the Act shows that, by this particular Section [8(b)(1)(A)], Congress primarily intended to prescribe the coercive conduct which sometimes accompanies a strike, but not the strike itself." The reason for this elimination of strikes generally from the purview of Section 8(b)(1)(A) can, I believe, be succinctly expressed in language from the NMU case, that a strike has "as its prime objective the protection of employment interests of [union] members, and not the coercing of non-members."

Thus the decisions of the NMU and Perry Norvell cases, the language of Section 8(b)(1)(A) and 8(b)(2), and the legislative history of Section 8(b)(1)(A)[3] indicate that where action by a union is directed at employers, the incidental effect of such action upon employee rights protected by Section 8(b)(1)(A) is not sufficient to bring the action within the prescription of Section 8(b)(1)(A). If this were not so, unions would be

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[3]See the NMU and Perry Norvell cases, supra, for a comprehensive study legislative history of Section 8(b)(1)(A).

forever precluded from exerting upon employers, in furtherance of valid union objectives, primary pressures such as strikes and peaceful picketing despite the fact that these activities impose upon disputant employers and the striking and picketing employees great hardships and expense without regard to the effect of the activities upon nonparticipating employees whose rights Section 8(b)(1)(A) seeks to protect. Mindful, therefore, of the distinction between subsections 8(b)(1)(A) and 8(b)(2), unions are, in my opinion, afforded an area of primary activity which being primarily directed at employers is not to be circumscribed because it incidentally may affect employee rights protected in Section 8(b)(1)(A).[4]

Because the Union's activity in this case was directed primarily at Clara-Val rather than at coercing or restraining employees, the Smith Cabinet and Seamprufe cases, cited by the majority, are not controlling. In these cases the union threats which the Board found to be coercive were made directly to individual employees. Nor in my opinion is it controlling that in the Julius Resnick case, also cited by the majority, the Board held that an employer who violated Section 8(a)(2) by the mere execution of an illegal union-security agreement, also restrained employees in violation of Section 8(a)(1) by the same conduct. The Board generally finds that an employer automatically interferes with,

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[4]Cf. Oil Workers International Union, Local Union 346 (CIO and the Pure Oil Company, 84 NLRB No. 38.

restrains, or coerces employees as a result of committing other unfair labor practices. However, in the NMU case, supra, the Board specifically stated that there was no "suggestion in the legislative history of Section 8(b)(1)(A) that 'coercion' and 'restraint' may be found to flow automatically from a union's violation of Section 8(b)(2)" where the efforts of the union were not directed against employees. Moreover, the same rule cannot be applied to employers and unions with respect to derivative violations of subsections 8(a)(1) and 8(b)(1)(A) respectively, for 8(a)(1) prescribes "interfering with" employees in the exercise of their rights guaranteed in Section 7, whereas there is no similar prescription in 8(b)(1)(A).

Upon the basis of all the foregoing I am of the opinion that where the Board finds that certain conduct of a union violates Section 8(b)(2) of the Act, the same conduct does not constitute a violation of Section 8(b)(1)(A). Accordingly, as we are finding that the conduct of the Respondent Union violated Section 8(b)(2), I would dismiss the allegation in the complaint that the Respondent Union, by the same conduct, violated Section 8(b)(1)(A) of the Act.

Signed at Washington, D. C., this 16th day of December, 1949.

JAMES J. REYNOLDS, JR.,
Member.
NATIONAL LABOR
RELATIONS BOARD.

[Title of Board and Cause.]

MR. EUGENE K. KENNEDY,
For the General Counsel.

MR. I. B. PADWAY,
Of San Francisco, Calif.
For the Respondent Union.

MR. VINCENT C. GIORDANO,
Of Morgan Hill, Calif.,
For the Respondent Company.

INTERMEDIATE REPORT

Statement of the Case

Upon charges duly filed by Nora E. Stiers, an individual, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director for the Twentieth Region (San Francisco, California), issued his consolidated complaint dated November 30, 1948, against Clara-Val Packing Company, herein called the Respondent Company, and Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, herein called the Respondent Union, and jointly referred to as the Respondents, alleging that the Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2), respectively, and Section 2(6) and (7) of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, accompanied by notice of

hearing and copies of the charges, were duly served upon the Respondents and Stiers.

With respect to the unfair labor practices, the complaint alleged in substance that: (1) on or about June 24, 1948, the Respondent Company, at the request and demand of the Respondent Union, discharged and thereafter refused to reinstate Stiers because of her alleged failure to maintain membership in good standing in the Respondent Union; and (2) by such acts the Respondent Company acted in contravention of the provisions of Section 8(a)(1) and (3) and the Respondent Union acted in contravention of the provisions of Section 8(b)(1)(A) and (2), respectively, of the Act.

Neither Respondent filed an answer but both denied at the hearing, and the Respondent Union denies in its brief thereafter filed, that they, or either of them, acted in contravention of any provision of the Act.

Pursuant to notice, and a necessary postponement[1] a hearing was held on March 23, 1949, at

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[1]The train in which the undersigned was proceeding to the place of the hearing suffered a wreck shortly before midnight, March 21, 1949, the day before the hearing was scheduled, and arrived at its destination some 10 hours late. Upon being informed of the unavoidable delay suffered by the undersigned in consequence of this mishap, the parties, and the official reporter, being present at the place of hearing, determined "that a record be made at this time for the purpose of submitting to the Trial Examiner and shall be considered by him as though it were taken during the course of a formal hearing opened by the Trial Examiner."

San Francisco, California, before the undersigned Josef L. Hektoen, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Respondent Company, and the Respondent Union were represented by counsel and participated in the hearing. Full opportunity to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties. The proceedings of the previous day covering some 26 pages of transcript were incorporated in the record by stipulation and the exhibits offered by the General Counsel and the Respondent Union were admitted into evidence. The motion of the General Counsel to amend the complaint in two minor particulars is hereby allowed without objection. The General Counsel and counsel for the Respondent Union argued briefly on the record. After the close of the hearing, a brief was received from counsel for the Respondent Union.

Upon the entire record in the case,[2] the undersigned makes the following:

Findings of Fact

I. The business of the Respondent Company

The Respondent Company, Clara-Val Packing Company, is a California corporation maintaining its principal place of business at Morgan Hill, California. It is there engaged in processing and shipping fruit. During the last half of 1948, it

[2]No witnesses were called, there being no dispute as to the facts in the case, which were stipulated by the parties.

bought fruit valued at more than $300,000.00, all from points within the State of California. During the same period, it sold finished products valued at approximately $400,000.00, of which about 90 per cent by value were shipped by it to points outside the State of California.

The Respondent Company admits, and the undersigned finds, that it is engaged in commerce, within the meaning of the Act.

II. The organization involved

Cannery Warehousemen, Food Processors Drivers and Helpers, Local Union No. 679, AFL, is a labor organization admitting to membership employees of the Respondent Company.

III. The unfair labor practices

A. Background and undisputed facts

As stated above, there is no dispute as to the factual situation obtaining in this case, the only question for determination being the legal conclusions that flow therefrom.

On June 24, 1948, the date of Stiers' discharge, the Respondents were in contractual relations pursuant to the terms of a contract between California Processors and Growers, Inc., a group of California cannery operators of which the Respondent Company is not a member, and California State Council of Cannery Unions, AFL, of which the Respondent Union is a part, the Respondents having agreed to operate under the terms of such con-

tract. The date of their agreement to this effect does not appear with certainty in the record. In any event, the "Master" contract was adopted on June 10, 1941, was thereafter amended on six occasions, the last of these having occurred on May 20, 1947,[3] and it was this amended contract under the terms of which Stiers was discharged.

The contract provided that employees in Stiers' category "shall be and shall remain members of the local in good standing as a condition of continued employment" and further provided that, absent the timely service of certain prescribed notices by either party thereto upon the other, the contract "shall continue without expiration date." It further provided that March 1 of each year be its "anniversary date." At the time of Stiers' discharge the March 1, 1948, anniversary date of the contract had passed without service of such notice by either party upon the other.

About the middle of June, 1948, Stiers was a dues-paying member of the Respondent Union and was employed by the Respondent Company. It came to the attention of the former that Stiers, in violation of union rules, was in the habit of penetrating union picket lines at the plant of Driscoll Strawberries, Inc., with which the Respondent Union was then engaged in an economic controversy, and performing work at the struck plant after her hours of duty at the Respondent Company's plant had been completed. She was tried by the Respond-

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[3]The contract was made effective as of March 1, 1947.

ent Union, found guilty, and assessed a fine of $200.00, which was reduced to $25.00 in consideration of her undertaking to cease violation of its laws in the future. Stiers failed to pay any part of the fine, continued to breach the picket lines at the Driscoll plant, and was thus rendered not in "good standing" in the Respondent Union.

On June 24, 1948, I. G. Ficarotta, business representative of the Respondent Union, informed Vincent C. Giordano, president of the Respondent Company, accordingly and demanded that it discharge her. The demand was accompanied by a threat that the Respondent Company would be struck and picketed should it refuse to discharge Stiers.

The Respondent Company discharged Stiers on the same day.

B. Conclusions

The General Counsel's position is that the contract section setting forth the term of the agreement fails to fall within the protection of Section 102 of the Act[4] in that it provides for annual renewal and that

[4]Sec. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not

its closed-shop provision was therefore inapplicable after March 1, 1948. Counsel for the Respondent Union contends that the contract was neither "renewed" nor "extended," within the meaning of Section 102, but was merely not "terminated," within the meaning of its own provisions and that it therefore continued in full force and effect and protected the parties against what it is tacitly admitted would otherwise constitute violations of Sections 8 (a) (1) and (3) and 8 (b) (1) (A) and (2).

The language of the contract, providing as it does for an annual "anniversary date" and for notice of termination within a stated period before such date, constitutes, in the opinion of the undersigned, despite that by its terms, absent notice of termination or certain other prescribed notices, the contract shall continue in effect "without expiration date," a form of "automatic renewal clause" often considered by the Board and the courts in both representation and dual-unionism matters.[5] It appears to the under-

[5]See e.g., N.L.R.B. v. Geraldine Novelty Company, Inc., et al., decided March 15, 1949, (C.A. 2), 23 L.R.R. 2483, and cases therein cited.

more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto. (Emphasis supplied.)

The Act was enacted on June 23, 1947, the effective date of the amendments made by Title I thereof being August 22, 1947.

signed to be clear from the holdings in such cases, that, should a rival union file a petition before what is known as the "Mill B" or automatic renewal date,[6] the contract would not be held a bar to the proceedings. Similarly, the undersigned believes that activities on behalf of a rival union in a protected period before an anniversary date of the contract, would receive safeguard. By analogy then, it must be found that the contract provisions contained an "automatic renewal clause."

The undersigned finds that the contract was on March 1, 1948, renewed or extended, within the meaning of Section 102 of the Act.

It follows that, although the contract was valid under the Act before its amendment, since the Amended Act not only abolishes the closed shop but also provides for a union security election before so much as a 30-day union shop provision may legally be included in a collective bargaining agreement,[7] the Respondent Company has discriminated against Stiers in regard to the hire and tenure of her employment to encourage membership in a labor organization, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. It also follows that, by causing it to do so, the Respondent Union has restrained and coerced an

[6]Matter of Mill B, Inc., 40 N.L.R.B. 346, 351.

[7]See Section 8 (a) (3) and the proviso thereto.

employee in the exercise of those rights. The undersigned so finds.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents set forth in Section III above, occurring in connection with the operations of the Respondent Company set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the Respondents, and each of them, have engaged in and are engaging in certain unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, designed to effectuate the policies of the Act.

It has been found that the Respondent Company on June 24, 1948, discriminated against Nora E. Stiers in regard to the hire and tenure of her employment because she failed to maintain good standing in the Respondent Union, and that the latter by causing it to do so, restrained and coerced her in the exercise of the rights guaranteed in Section 7 of the Act. It will therefore be recommended that the Respondent Company offer to her immediate and full reinstatement to her former or substantially equiva-

lent position[8] without prejudice to her seniority or other rights and privileges. It will be further recommended that the Respondents, jointly and severally, make her whole for any loss of pay she may have suffered by reason of the discrimination and coercion against her by payment to her of a sum of money equal to that which she normally would have earned as wages from the date of her discriminatory discharge, to the date of the Respondent Company's offer of reinstatement,[9] less her net earnings during said period.[10]

Upon the basis of the foregoing findings of fact

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[8]In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, and if such position is no longer in existence, then to a substantially equivalent position." See Matter of The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch, 65 N.L.R.B. 827.

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[9]See Section 10 (c) of the Act which provides that back pay which will effectuate the policies of the Act "may be required of the employer or labor organization, as the case may be, responsible for the discrimination. . . ." Since the Respondent Company, as is shown above and by the transcript, would not have discharged Stiers but for the pressure put upon it to do so by the Respondent Union, it appears to be expedient to require that both Respondents share liability for the consequences of their mutually illegal acts.

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[10]See Matter of Crosset Lumber Company, 8 N.L.R.B. 440. Republic Steel Company v. N.L.R.B., 311 U. S. 7.

and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. The Respondent Union, Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Nora E. Stiers, thereby encouraging membership in the Respondent Union, the Respondent Company, Clara-Val Packing Company, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent Company has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (a) (1) of the Act.

4. By causing the Respondent Company to discriminate against an employee in violation of Section 8 (a) (3) of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (b) (2) of the Act.

5. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (b) (1) (A) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record herein, the undersigned recommends that:

1. The Respondent Company, Clara-Val Packing Company, Morgan Hill, California, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Encouraging membership in Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, or in any other labor organization of its employees, by discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(2) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

(b) Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(1) Offer to Nora E. Stiers immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges;

(2) Jointly and severally with the Respondent Union, make her whole for any loss of pay she may

have suffered by reason of their discrimination and restraint and coercion against her, in the manner set forth in the Section entitled "The remedy," above;

(3) Post at its plant at Morgan Hill, California, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region shall, after being duly signed by the Respondent Company's representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that such notices are not altered, defaced, or covered by any other material;

(4) Notify the Regional Director for the Twentieth Region in writing, within twenty (20) days from the receipt of this Intermediate Report, what steps the Respondent Company has taken to comply herewith.

2. The Respondent Union, Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Causing or attempting to cause Clara-Val Packing Company, or any other employer, to discriminate against an employee in violation of Section 8 (a) (3) of the Act;

(2) In any other manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

(b) Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(1) Jointly and severally with the Respondent Company, make whole Nora E. Stiers for any loss of pay she may have suffered by reason of their discrimination and restraint and coercion against her, in the manner set forth in the Section entitled "The remedy," above;

(2) Post at its offices, if any, at Morgan Hill, California, and post or offer to post, at the plant of Clara-Val Packing Company, of the same place, copies of the notice attached hereto and marked Appendix B. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region shall, after being duly signed by the Respondent Union's representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced, or covered by any other material. Copies of the notice shall be posted, or attempted to be posted, at the plant of the Respondent Company and maintained in the fashion set out above;

(3) Notify the Regional Director for the Twen-

tieth Region in writing, within twenty (20) days from the receipt of this Intermediate Report what steps it has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report, the Respondent Company notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring it to take the action aforesaid.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report, the Respondent Union notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring it to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceedings (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six

copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board withn ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 6 day of June, 1949.

/s/ JOSEF L. HEKTOEN,
Trial Examiner.

Appendix A

Notice To All Employees
Pursuant To

The Recommendations of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discriminate in regard to the hire or tenure of employment or any term or condition of employment of any employee to encourage membership in Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, or any other labor organization.

We Will Offer to Nora E. Stiers immediate and full reinstatement to her former or substantially equivalent position, and jointly and severally with Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, make her whole for any loss of pay suffered as a result of the discrimination and restraint and coercion against her.

CLARA-VAL PACKING
COMPANY,
(Employer).

Dated.....

By .....

(Representative) (Title).

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B

Notice To All Members
Pursuant To

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members that:

We Will Not cause or attempt to cause Clara-Val Packing Company, Morgan Hill, California, or any other employer, to discriminate against its employees in regard to their hire or tenure of employment or any term or condition of employment to encourage membership in any labor organization in violation of Section 8 (a) (3) of the National Labor Relations Act.

We Will, jointly and severally with Clara-Val Packing Company, make Nora E. Stiers whole for any loss of pay suffered as a result of the discrimination and restraint and coercion against her.

CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION No. 679, AFL,
(Labor Orangization).

Dated.....

By.....,
(Representative) (Title).

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

ORDER CORRECTING DECISION AND ORDER

On December 16, 1949, the Board issued a Decision and Order in the above-entitled proceeding.

It Is Hereby Ordered that the aforesaid Decision and Order be, and it hereby is, corrected as follows:

1. On page 8 Paragraph 1, line 7 the phrase "Section 8 (b) (1) (a)" should read "Section 8 (b) (1) (A)"; line 8, the word "discrimintae" should read "discriminate."

2. Paragraph 2, line 7, the word "prescribes" should read "proscribes"; line 8 the phrase "Section 8 (b) (1) (a) prescribes" should read "Section 8 (b) (1) (A) proscribes."

3. Paragraph 3, line 8 should read as follows: "that the strike did not violate Section 8 (b) (1) (A). Yet in both cases the"; line 10, the phrase "Section 8 (b) (1) (a) should read "Section 8 (b) (1) (A)"; line 14, the word "prescribe" should read "proscribe."

4. Paragraph 4, line 6, the word "prescription" should read "proscription."

5. Footnote 3 should read as follows: "3 See the NMU and Perry Norvell cases, supra, for a comprehensive study of the legislative history of Section 8 (b) (1) (A)."

6. On page 9, line 18 of the first full paragraph, the word "prescribes" should read "proscribes,"

and line 20, the word "prescription" should read "proscription."

It Is Further Ordered that the aforesaid Decision and Order as printed, shall appear as hereby corrected.

Dated, Washington, D. C., December 27, 1949.

By direction of the Board:

/s/ LOUIS R. BECKER,

Acting Executive Secretary.

Before the National Labor Relations Board
Twentieth Region
Case No. 20-CA-117, et al.

In the Matter of:

CLARA-VAL PACKING COMPANY, et al.,

and

NORA E. STIERS, an Individual.

Pursuant to notice, the above-entitled matter came on for hearing at 9:30 a.m.

Before: JOSEPH L. HEKTOEN, ESQ.,
Trial Examiner.

Appearances:

EUGENE K. KENNEDY, ESQ.,
San Francisco, California,
Appearing on Behalf of the General Counsel, National Labor Relations Board.

I. B. PADWAY, ESQ.,
420 de Young Building,
San Francisco, California,

Appearing on Behalf of Cannery Workers Union, Local 679.

VINCENT C. GIORDANO, ESQ.,
Morgan Hill, California,
President, Clara-Val Packing Company,

Appearing on Behalf of the Company.

PROCEEDINGS

Trial Examiner Hektoen: May I make an explanatory statement? On account of circumstances beyond my control including a train wreck and other things I was unable to get here until after the close of the hearing yesterday, and this I take it is a sort of a wind-up of findings of fact which the parties have reached agreement on as of yesterday in San Jose, is that correct?

Mr. Kennedy: That's correct, Mr. Examiner.

Mr. Padway: That's right.

Mr. Kennedy: If I might, I might perhaps attempt to state it in a way that might be a little further amplification on the subject.

Trial Examiner Hektoen: Yes.

Mr. Kennedy: When we learned that you were unavoidably delayed yesterday, the parties, Mr. Padway and Mr. Giordano particularly, had commitments into the indefinite future which precluded any reasonable time that they could expect to make an

appearance in a hearing, and subject to your approval, the parties decided that inasmuch as a reporter was present they would set forth as best they could the facts as were understood, and as it turned out, there is no disagreement on the facts between counsel for the Respondent Company or the Union or the General Counsel.

* * *

Mr. Kennedy: ——I will now so makes the offer that I will stipulate to the proceedings that were—or I should say the record that was made yesterday as being a stipulation of fact to be incorporated in this record.

Trial Examiner Hektoen: All right, Mr. Padway?

Mr. Padway: I do likewise, and in addition to that, I ask that the exhibit which we offered, and which counsel, the representative of the General Counsel for the Board, has a copy of, and which I will furnish three more copies to him today, be received as Union's Exhibit 1.

Trial Examiner Hektoen: And that exhibit is——?

Mr. Padway: Collective Bargaining Agreement in existence at the time that——

Trial Examiner Hektoen: Between the Respondent and the Union?

Mr. Padway: That's correct.

Trial Examiner Hektoen: Or between both respondents. Any objection, Mr. Kennedy?

Mr. Kennedy: No objection.

Trial Examiner Hektoen: It's received.

(The document heretofore marked Union's Exhibit No. 1 for identification, was received in evidence.)

Mr. Kennedy: At this time I will also offer General Counsel's Exhibit 1, consisting of the formal documents.

Trial Examiner Hektoen: I take it there is no objection to that?

Mr. Padway: No objection to that.

Trial Examiner Hektoen: And you are speaking also, I understand, for Mr. Giordano in these formal matters?

Mr. Padway: Yes. He likewise upon presentation of exhibit 1, and subdivisions, agreed that it was agreeable to him.

Trial Examiner Hektoen: Very good. They may both be received.

(The documents heretofore marked General Counsel's Exhibit No. 1(a) through 1(g) inclusive, for identification, were received in evidence.)

GENERAL COUNSEL'S EXHIBIT 1-A

United States of America
National Labor Relations Board
Charge Against Employer

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Clara-Val Packing Co. at Morgan Hill, California, employing 30 workers in dried fruit packing

has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) subsections (1) and (3) of said Act, in that:

2. On or about June 29, 1948, it, by its officers, agents and representatives, discriminated in regard to hire and tenure of employment of Nora E. Stiers, one of its employees, because of her refusal to engage in union activity.

By the above act and by other acts and conduct the employer has interfered with, restrained and coerced Nora E. Stiers and is interfering with, restraining and coercing Nora E. Stiers in the rights guaranteed to her by Section 7 of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. (Paragraphs 3, 4, and 5 apply only if the charge is filed by a labor organization). The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f) (A), 9(f) (B) (1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number .....
The financial data filed with the Secretary of Labor is for the fiscal year ending .....
A certificate has been filed with the National Labor Relations Board in accordance with Section 9(f) (B) (2) stating the method employed by the union in furnishing to all its members copies of the finan-

cial data required to be filed with the Secretary of Labor.

4. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

5. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

6. (Full name of labor organization, including local name and number, or person filing charge): Nora E. Stiers. (Address): Spring Ave., Morgan Hill, California.

7. (Full name of national or international labor organization of which it is an affiliate or constituent unit): Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679. (Address): 288 W. Santa Clara St., San Jose 22, California. (Telephone number): BAllard 3044.

Case No. 20-CA-117.

Date filed 8/3/48.

9(f), (g), (h) cleared Local 679—9/10/48.

AYG

By /s/ NORA E. STIERS,
(Person Filing Charge.)

Subscribed and sworn to before me this 3rd day of August, 1948, at San Francisco, Calif., as true

to the best of deponent's knowledge, information and belief.

/s/ M. C. DEMPSTER,
(Board Agent or
Notary Public.)

GENERAL COUNSEL'S EXHIBIT 1-B

United States of America

National Labor Relations Board

Charge Against Labor Organization or Its Agents

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, A. F. of L., at San Martin and Morgan Hill, Calif., has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8(b) subsections (1) (a) and (2) of said Act, in that: (Recite in detail in paragraph 2 the basis of the charge. Be specific as to names, addresses, plants, dates, places, and other relevant facts).

2. (a) On or about June 21, 1948, it, by its officers, agents or representatives intimidated and assaulted Nora E. Stiers, an employee of Driscoll, Inc., San Martin, Calif., and damaged her automobile.

(b) On or about June 29, 1948, it, by its officers, agents or representatives caused Clara-Val Packing Company to discriminate against Nora E. Stiers by requesting the Company not to rehire Nora Stiers and to terminate her employment in violation of the provisions of Section 8(a) (3) of the Act.

By the above acts and by other acts and conduct the Union coerced Nora E. Stiers and is interfering with, restraining and coercing Nora E. Stiers in the rights guaranteed to her by Section 7 of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. Name of Employer: Clara-Val Packing Co.

4. Location of plant involved: Morgan Hill, Calif. Employing 30 workers.

5. Nature of business: Packing dried fruit.

6. (Paragraphs 6, 7, and 8 apply only if the charge is filed by a labor organization.) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f) (A), 9(f) (B) (1), and 9(g) of said Act, as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number ..... The financial data filed with the Secretary of Labor is for the fiscal year ending ..... A Certificate has been filed with the National Labor Relations Board

in accordance with Section 9(f) (B) (2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

7. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

8. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

(Full name of party filing charge): Nora E. Stiers.

(Address): Spring Ave., Morgan Hill, California.

Case No. 20-CB-29.

Dated Filed 8/3/48.

9(f), (g), (h) cleared Local 679—9/10/49.

AYG

By /s/ NORA E. STIERS,
(Person filing charge.)

Subscribed and sworn to before me this 3d day of August, 1948, at San Francisco, Calif., as true to the best of deponent's knowledge, information and belief.

/s/ M. C. DEMPSTER,
(Board Agent or
Notary Public.)

GENERAL COUNSEL'S EXHIBIT 1-E

United States of America Before the National Labor Relations Board, Twentieth Region

Case No. 20-CA-117

In the Matter of
CLARA-VAL PACKING COMPANY
and
NORA E. STIERS, an Individual.

Case No. 20-CB-29

In the Matter of
CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION No. 679, AFL
and
NORA E. STIERS, an Individual.

COMPLAINT

It having been charged by Nora E. Stiers, an individual, that Clara-Val Packing Company, herein called respondent Company, and Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, herein called respondent Union, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 29 U.S.C.A. 141 et seq. (Supp. July, 1947), herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region, designated by the Board's Rules and Regu-

lations, Series 5, as amended, Section 203.15, hereby issues his Complaint and alleges as follows:

I.

The respondent Company is, and at all times herein mentioned, has been a California corporation with its plant and principal place of business at Morgan Hill, California, where it is engaged in the business of processing and selling dried fruit.

II.

At all times herein mentioned, the respondent Company in the course and conduct of its business has caused to be shipped from its plant substantial amounts of produce to points outside the State of California. During the year 1947, the respondent sold and shipped processed dried fruit which was valued in excess of $500,000, and of this amount approximately 25% was shipped to points outside the State of California.

III.

Respondent Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

IV.

On or about June 24, 1948, respondent Company, by its agents, officers and employees, discharged Nora E. Stiers upon the request and demand of respondent Union because said respondent Company

had been advised that said Stiers was not in good standing as a member of said respondent Union.

V.

Respondent Company, by the acts set forth in paragraph IV above, did discriminate and is now discriminating in regard to hire and tenure of employment and terms and conditions of employment of Nora E. Stiers, and did encourage, and is encouraging membership in, or adherence to a labor organization, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.

VI.

By the acts set forth in paragraph IV above, the respondent Company did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

VII.

On or about June 24, 1948, the respondent Union, by its officers, agents and employees, did cause the respondent Company to discharge Nora E. Stiers because of her alleged failure to maintain membership in good standing in respondent Union.

VIII.

By the acts set forth in paragraph VI above, the respondent Union did cause the employer to dis-

criminate against an employee in violation of Section 8(a)(3) and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(b)(2) of the Act.

IX.

By the acts set forth in paragraph VII above, the respondent Union did interfere with, restrain and coerce, and is interfering with, restraining and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8 (b)(1)(A) of the Act.

X.

The acts of the respondent Company and respondent Union set forth in paragraphs IV and VII above, occurring in connection with the operations of the employer as set forth in paragraphs I and II above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

XI.

The acts of respondent Company set forth in paragraph IV above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and 8 (a)(3), and Section 2(6) and 2(7) of the Act.

The acts of respondent Union as set forth in para-

graph VII above, constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and 8(b)(2), and Section 2(6) and 2(7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, on this 30th day of November, 1948, issues his Complaint against Clara-Val Packing Company and Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, respondents herein.

[Seal] /s/ GERALD A. BROWN,
Regional Director, National
Labor Relations Board.

GENERAL COUNSEL'S EXHIBIT 1-F

United States of America Before the National Labor Relations Board Twentieth Region

Case No. 20-CA-117

In the Matter of
CLARA-VAL PACKING COMPANY
and
NORA E. STIERS, an Individual.

Case No. 20-CB-29

In the Matter of

CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS,

LOCAL UNION NO, 679, AFL

and

NORA E. STIERS, an Individual.

ORDER CONSOLIDATING CASES AND NOTICE OF CONSOLIDATED HEARING

Charges, pursuant to Section 10(a) of the Labor Management Relations Act, 1947 (Public Law 101, 80th Congress, Chapter 120, 1st Session), having been filed by Nora E. Stiers, an individual, Cases Nos. 20-CA-117 and 20-CB-29, copies of which charges are hereto attached, and the undersigned having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay.

It Is Hereby Ordered, pursuant to Section 203.33 (b) of the National Labor Relations Board Rules and Regulations—Series 5, as amended, that these cases be, and they hereby are, consolidated.

You Are Hereby Notified that, pursuant to Section 10(b) of the Act, on the 22nd day of March, 1949, at 10 o'clock in the forenoon, in Room A, Civic Auditorium, Market and San Carlos Streets, San Jose, California, a hearing will be conducted before a Trial Examiner of the National Labor Relations Board upon the allegations set forth in the Complaint attached hereto, at which time and place the parties will have the right to appear in person or otherwise and give testimony.

In Witness Whereof, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Order Consolidating Cases

and Notice of Consolidated Hearing to be signed by the Regional Director for the Twentieth Region on this 30th day of November, 1948.

[Seal] /s/ GERALD A. BROWN,

Regional Director, National Labor Relations Board, 821 Market Street, San Francisco 3, California.

* * *

(Pursuant to the instructions of the Trial Examiner, the proceedings of Tuesday, March 22, 1949, at San Jose, California, are incorporated into this record as follows.)

Mr. Kennedy: The Trial Examiner in this matter of Clara-Val Packing Company, 20-CA-117, and Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, 20-CB-29, has been unavoidably detained and we have just received information that he will not be available at this hearing during this entire day. Inasmuch as there seems to be a substantial agreement as to the facts in this matter but a difference of opinion as to the application of the law, and all the parties are agreeable, it is proposed that a record be made at this time for the purpose of submitting to the Trial Examiner and shall be considered by him as though it were taken during the course of a formal hearing opened by the Trial Examiner.

I would like to have the other parties up to this point indicate whether they are in accord with that

general proposition, reserving, of course, the right, if we do reach a substantial difference in the facts, to preserve that right not to go along with this method at that time.

Mr. Padway: As representing Local 679——

Mr. Kennedy: By the way, it also would seem to be appropriate if we indicate on the record who are representing the respective parties here.

Mr. Padway: My name is Padway, my initials are I. B., and my address is Room 420, de Young Building, San Francisco, California. At this hearing I represent Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL.

Mr. Kennedy: I think we might state here that the Clara-Val Packing Company is represented by Mr. Vincent Giordano, President of the Company, and appearing for the General Counsel is Eugene K. Kennedy.

Mr. Padway: On behalf of the Union and in view of several preliminary conferences had with the Board, I believe that the facts in this case are more or less undisputed, and that the question involved resolves itself into an interpretation of the Labor-Management Relations Act. With this in mind I believe that it would be logical for the Board to present its facts and then we in turn will present our facts, and that all of the facts may be presented to the Trial Examiner for his consideration, taking into consideration that the usual procedural matters

such as commerce and so forth will first be presented, and that a decision may be made by the Board on the facts as so agreed upon by all of the parties.

Mr. Kennedy: Is this procedure agreeable?

Mr. Padway: The procedure that is now contemplated is agreeable to my clients, Cannery Workers Union, Local 679.

Mr. Kennedy: Is that agreeable with you, Mr. Giordano, that procedure?

Mr. Giordano: Yes. As far as I am concerned, I believe it would be in order to proceed in that manner.

Mr. Padway: I might add, too, that we waive any right to question the procedure before the Board.

Mr. Kennedy: Is that also your position, Mr. Giordano?

Mr. Giordano: That's right.

Mr. Kennedy: I think we might specify here that it is tentatively planned by Mr. Padway and myself to present this matter to the Trial Examiner in San Francisco tomorrow, who we understand will be available at that time. It is also my understanding that on that occasion, if it is agreeable with Mr. Giordano, that the Clara-Val Packing Company be represented by Mr. Padway.

Mr. Giordano: That is true.

Mr. Padway: That is, any question that will not in any manner conflict with our stand.

Mr. Giordano: I see, yes.

Mr. Padway: And you will be able to derive that from the stipulations that we make.

Mr. Giordano: This afternoon, you mean?

Mr. Padway: Yes. In other words, you will be able to tell whether or not it will be all right for me to represent you people in the matter before the Trial Examiner, and only for this hearing.

Mr. Giordano: I see, yes.

Mr. Kennedy: It seems very probable it will be only in a very formal respect you will be represented. It will be, in essence, putting in an appearance for you without anything additional.

Mr. Padway: I also want to add this. That I naturally will not represent you as far as any facts or figures are concerned, in relation to commerce.

Mr. Giordano: That I will present myself this afternoon, and then those facts can go on the record and you can proceed from the presentation given this afternoon.

Mr. Kennedy: That will be very agreeable, Mr. Giordano.

Mr. Padway: I have already waived, Mr. Kennedy the formal procedure such as the statement made by the Trial Examiner prior to the hearing. I think you should get Mr. Giordano to waive that also.

I might state, there are customary statements that are made, the Trial Examiner will tell you prior

to a hearing of certain things that you have a right to do, and which you have a right not to do in relation to prosecuting your defense on this matter. There are certain rules of procedure which he reads. Now, I know what they are and I can tell you right now there would be nothing in those rules that would be detrimental to you.

As far as my union is concerned I waive them for the union, the reading of those procedural rules.

Mr. Giordano: From what little I know of law I would say I wouldn't hesitate in waiving those same conditions as you do.

Mr. Kennedy: And as a matter of form I will also waive them for the General Counsel. I think that possibly we can dispose of the preliminary formal aspects.

I will submit, or offer subject to the approval of the Trial Examiner, the formal documents in this matter, and if that is agreeable I will ask the parties to stipulate that they would have no objection to the receipt of them by the Trial Examiner.

I wish to have marked for identification this file of formal documents to be designated as General Counsel's Exhibit 1, containing the original Charge in Case 20-CA-117 filed August 31, 1948, marked for identification General Counsel Exhibit 1(a); for identification as General Counsel's Exhibit 1(b), the original Charge in the Case 20-CB-29, filed August 3, 1948, for identification as 1(c), the Affidavit of Service of the copy of the original Charge in 20-CA-117 with returned receipt card attached; for

identification as General Counsel's 1(d), the Affidavit of Service of the copy of the original Charge in Case 20-CB-29, with return receipt card attached, as General Counsel's Exhibit 1(e) for identification, the original Complaint issued on November 30, 1948; for identification as General Counsel's Exhibit 1(f), the original Order Consolidating Cases and Notice of Consolidated Hearing issued on November 30, 1948; and for identification as General Counsel's 1(g), the Affidavit of Service of the Complaint, Charges, Order of Consolidating Cases, and Notice of Consolidated Hearing with return receipt cards attached. These were mailed on November 30, 1948.

(Thereupon the documents above referred to were marked General Counsel's Exhibit 1(a) through 1(g) inclusive for identification.)

Mr. Kennedy: Now, I will at this time for the record, offer these in evidence as General Counsel's Exhibit with the subdivisions as have been indicated, and I will ask the parties whether they will stipulate that they have no objections to the receipt of this in evidence by the Trial Examiner.

Mr. Padway: We have no objection.

Mr. Giordano: I have no objection.

Mr. Kennedy: Now, as a matter of form in these matters if a labor organization is participating there has to be established affirmatively that it is in fact a labor organization within the meaning of Section 2(5) of the Act. We can cover that by stipulation.

Mr. Padway: I might state that we are an or-

ganization within the provisions of the Act, and are registered as an organization with the Board at the present time.

Mr. Kennedy: The General Counsel will stipulate that the Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679 is a labor organization within the meaning of Section 2(5) of the Act.

Will you join in that stipulation, Mr. Giordano?

Mr. Giordano: Surely.

Mr. Kennedy: Of course, you will too, Mr. Padway?

Mr. Padway: Yes.

Mr. Kennedy: With respect to the business of the Clara-Val Company would you state for the record, or perhaps I might, Mr. Giordano, that it is a California corporation with its main place of business in Morgan Hill.

Mr. Giordano: Santa Clara County, Santa Clara Valley.

Mr. Kennedy: And is engaged in the business of processing fruit and shipping it in a processed form.

Mr. Giordano: That is correct.

Mr. Kennedy: Is it also true that during the last half of 1948 the approximate purchases of fruit by the Clara-Val Company were in excess of $300,000, all of which was purchased within the

State of California, and during the same period the sales of the Company were approximately $400,000, and the sales represented these dried fruit products, and that of these sales approximately 90 per cent by value were shipped outside the State of California.

Mr. Giordano: That is correct, to the best of my knowledge.

Mr. Kennedy: That is approximately correct?

Mr. Giordano: That's right.

Mr. Kennedy: I will propose that in the form of a stipulation for the record, those facts that have just been outlined.

Will you join in that, Mr. Padway?

Mr. Padway: I have no objections.

Mr. Kennedy: And you stipulate that that is true also, Mr. Giordano?

Mr. Giordano: That's right.

Mr. Kennedy: I will outline generally what the General Counsel's case would consist of from a factual basis, subject to your comments, additions or subtractions.

Mr. Padway: I think before you do that, I think Mr. Giordano, in order that we have a complete record and no question as to the record that he does agree that they are engaged in commerce.

Mr. Kennedy: Yes. Could you concede that your business is within the jurisdiction of the Na-

tional Labor Relations Board as affecting commerce?

Mr. Giordano: You mean by volume and dollars?

Mr. Kennedy: Well, there is a large body of law on what enterprises or activities are subject to federal jurisdiction.

Mr. Giordano: Yes, I would agree we would be under federal jurisdiction because of the nature of our business. In other words, 90 per cent of it or more goes out of the State, so under that we would be classified as in interstate commerce.

Mr. Kennedy: I think the record is clear on that, Mr. Padway. Now, do you have any suggestions other than the one I just indicated as to my attempting to outline, subject to your further revision, what I consider to be the facts in this case?

Mr. Padway: Right. That is, the facts that the General Counsel's representative believes to be the facts.

Then, of course, the Union will state its facts, and if you have any objections you are at liberty to do the same with my statement of facts.

Mr. Kennedy: And ultimately the purpose, of course, is to make an agreed statement of facts for the record so there will be no conflict in the testimony.

Mr. Padway: That's right.

Mr. Kennedy: The situation in which the Complaint is alleged grew out of an incident which occurred in June, 1948, approximately around June 24th, when the charging party, Nora Stiers, who was an employee of the Clara-Val Packing Company, was discharged by this Company through its officers, including Mr. Giordano, who was responsible for the people that actually discharged Nora Stiers. Discharge was effected at the insistence of the Business Representative of Local 679, Mr. I. G. Ficarrota.

Local 679 had employees working at Clara-Val who were members of the Union, and the representation to Mr. Giordano of Clara-Val was that because Nora Stiers had violated the union rules by going through the picket line at another establishment where Local 679 was conducting a strike that she was no longer in good standing with the Union, and that if Mr. Giordano did not discharge her then a picket line would be placed around the Clara-Val plant and it would be attempted to shut down its operations.

As a result of this representation by Mr. Ficarrota to Mr. Giordano, Nora Stiers was discharged around June 24, 1948, and has not been re-employed at Clara-Val since that date, although subsequent to her discharge there was further work that she could reasonably have expected to have engaged in.

Now, that is a very preliminary statement, Mr. Padway and Mr. Giordano, and I am wondering if at this particular point you would care to amplify or fill in any of the gaps.

Mr. Padway: I was going to add one thing which is very important to you which you may have by oversight omitted, and that was that her dues were paid up at the time she was removed from her employment.

Mr. Kennedy: Yes, although it is my opinion that the fact of her paying dues which I will also include now—there had not been a union shop election at this plant—it was my opinion that these two elements are more properly a matter of defense as a procedural matter and have to be argued affirmatively. But inasmuch as we are making a record I think in this informal manner we may as well bring out all the aspects to be clear about the situation.

Mr. Padway: I thought it was of benefit to you, based upon a stand that there was discrimination against Nora Stiers. That is the contention I presume of the General Counsel, that there was discrimination as against her in that she was removed from her employment in spite of the fact that she had paid her dues to the Union and that the Act says she cannot be removed except for non-payment of dues.

Mr. Kennedy: That is very true, Mr. Padway, and I think for purposes of clarity your suggestion is entirely proper in that respect.

Mr. Padway: I wanted a full record, you see, and I don't want to take any advantage in this matter.

Mr. Kennedy: I wonder, what has been said so far, does that accord with the facts as both you and Mr. Giordano understand them?

Mr. Padway: In a sense, yet I must enhance a little at some future point. Do you want me to do it now?

Mr. Kennedy: As I understand it we are not making a stipulation yet, we are still in the process of forming what the complete understanding is.

Mr. Padway: As I am giving to understand by my clients who are here today and would testify to these facts, Nora Stiers was employed at the Clara-Val Cannery which was covered by a collective bargaining agreement and which you have a copy of, and I have no objection that it be introduced into evidence, or I will furnish you with another copy and give it to you tomorrow morning. I will furnish you with two or three copies so you will have them on hand for tomorrow morning.

And that by the terms of this agreement I will now introduce for the purpose of completing the record, a collective bargaining agreement between the California Processors and Growers, Inc. and California State Council of Cannery Unions, American Federation of Labor which is a printed agreement of collective bargaining agreement existing between the Company and the Union—this will be introduced as Union's Exhibit 1 for identification.

Mr. Kennedy: Subject to the approval of the Trial Examiner.

(Thereupon the document above referred to was marked Union's Exhibit No. 1 for identification.)

Mr. Padway: And that Section 4 recites the employment conditions.

Mr. Kennedy: Would you mind reading those into the record? It might be more convenient.

Mr. Padway: Section 4 is entitled "Employment Conditions."

Now reading from Exhibit 1, Union's Exhibit 1 for identification, subsection (a):

"All employees performing work listed in Appendix A hereof shall be and shall remain members of the Local in good standing as a condition of continued employment.

"(b) Procedural rules for accomplishing the contractual requirements set forth in this section appear as Appendix B of this agreement."

And then (c) refers to the deduction from wages as a check-off of dues.

At the time that Nora Stiers, the moving party in this matter before the Board, was employed at the Clara-Val Cannery she was a member of Local 679, and she had paid her dues to the Union. That on or about the middle of June, 1948, the representative of Local 679 was advised by various members of the Union at the Clara-Val Cannery that Nora Stiers, after her employment would cease at

the cannery, would then go to another food processing plant known as the Driscoll Strawberries, Inc., against whom Local 679 was then engaged in an economic labor controversy, and in fostering that labor controversy a picket line was established and placed around the premises of the Driscoll Strawberries, Inc. The representative of the Union was further advised that Nora Stiers had proceeded through that picket line contrary to the provisions contained in the Constitution of Local 679, and that she would then perform work at the Driscoll Strawberries, Inc., approximating anywhere from 4 to 8 hours per night.

That immediately upon being advised of this condition the representative of the Union caused certain charges to be preferred as against Nora Stiers, and that she was tried by the Executive Board of the Union and fined the sum of $200, which fine was suspended providing Nora Stiers agreed to pay the sum of $25 in cash and would agree not to violate the Union's Constitution in the future. Nora Stiers failed to pay the $25 and likewise failed to pay the $200 fine.

That Nora Stiers was removed from her employment by the representative of the Union. In referring to the representative of the Union I will state that the representative of the Union was I. G. Ficarrota who has already been mentioned by the General Counsel's representative at this hearing.

That the reason for her removal was the violation that has already been set forth in this record, and for the further reason that employees working at

the Clara-Val plant refused to continue working as long as Nora Stiers was employed.

That it was at the insistence of the Union representative that Nora Stiers was removed from her employment. That she remained out of work for a short period of time when she obtained employment at some other plant, as I am given to understand, covered by an AFL Union.

That her seniority would have afforded her possibly two or three weeks work at the most before the season would have ended. The cannery operation at Clara-Val is of a strictly seasonal nature, having certain periods of the year when certain fruits are available to be processed that it will operate with a full force. That aside from that, I believe the number of employees to be of a minute or small number.

Mr. Giordano: With one correction, Mr. Padway. Dried fruit operations are less seasonal than the cannery operation. They are more consistent than the canned division of the Company. However, at the time when this incident occurred the dried fruit operations were at their lowest ebb also. In other words, the dried fruit operation begins after the harvest of fruit from the growers, and that is reflected in the sales of the Company. In other words, the sales in June were approximately $8,700, and then at the end of July they stepped up to $100,000. In other words, sales parallel the delivery of fruits by the growers to us.

* * *

Mr. Kennedy: On the record.

Mr. Padway: I understand that Nora Stiers went back to work on the 8th of August at Continental Can Company.

In sum and substance the Union is willing to stipulate that the employer was requested to remove Nora Stiers from her employment, and that her removal was because of the prescribed rules with respect to the acquisition and retention of membership in the Union and was based upon her violation of these rules.

Mr. Kennedy: Off the record.

(Discussion off the record.)

Mr. Kennedy: On the record.

In an off-the-record discussion Mr. Padway indicated that he is not disputing the statement made by me previously that a representation was made to the Company that the Union employees would leave their jobs and that the plant would be picketed if Nora Stiers was not discharged, and also agrees to the proposition that the Union demanded her discharge.

Now, it is the General Counsel's position that Section 15 of the contract which was in effect between Local 679 and Clara-Val does not come within the provisions of Section 102 of the National Labor Relations Act as amended. There is a difference of opinion, as I understand it, as to the interpretation of this section of the contract which was in effect between Local 679 and Clara-Val. The

position taken by Mr. Padway on behalf of the Union is that this contract was of indefinite duration and has never been opened pursuant to the methods prescribed for re-opening the contract.

Mr. Padway: It is our contention that the contract remained in force and effect after March 1, 1948, for the simple reason that no notice was given to reopen the contract by either party, either the employer or the union, and that the contract remained in full force and effect as provided for in the printed agreement of Union Exhibit 1 for identification.

Mr. Kennedy: I might indicate the agreement was originally executed March 1, 1947, as provided in Section 15.

Mr. Padway: It was later, but it was retroactive to that date. It was executed somewhere around June 15.

Mr. Giordano: Our contract was after the General Canners contract. Ours was, I think in April or June, I have forgotten the exact date.

Mr. Kennedy: It is the position of the General Counsel that the effect of Section 15 of the agreement provides for a renewal each year, and consequently the closed shop provisions in the contract would not be applicable after March of 1948.

Mr. Padway: Of course, that is the difference of our opinion. We contend that it was still in force.

Mr. Kennedy: Now, with respect to the particular instance involved here is it your contention that she was discharged pursuant to the terms of this contract for violating, or is the provision in the alternate, Mr. Padway?

Mr. Padway: What do you mean, in the alternate?

Mr. Kennedy: I believe it is substantially subject to confirmation by Mr. Giordano we have agreed as to the facts in existence as of the time of her discharge, that there was a certain violation of union regulations by Nora Stiers, the charging party, and that because of those violations the union insisted on Clara-Val discharging her.

Mr. Padway: That is right.

Mr. Kennedy: Now, is it your position that the discharge was effected because of the contract right that the union had to insist on performance by the employer of this agreement which is Union's Exhibit No. 1 for identification?

Mr. Padway: Plus the violation of the union rules.

Mr. Kennedy: Off the record.

(Discussion off the record.)

Mr. Kennedy: On the record.

It is my understanding and I will so stipulate that in accordance with the terms of Section 15 of this contract which is Union Exhibit 1 for identi-

fication, that termination would not be effected by either subdivisions A(1) or A(2) of Section 15, and that modification had not been effected in accordance with subsection C of Section 16, and also that it is Mr. Giordano's position that at the time of the discharge of Nora Stiers it was his position that the closed shop provision of the contract which has been outlined, I believe, by Mr. Padway previously, was still in effect.

Mr. Padway: I also want to bring home that this contract, Union's Exhibit 1, is a contract existing between the California Processors and Growers which consists of a group of cannery operators here in the State of California, and that Mr. Giordano, the Clara-Val Company, is not a part of the CP&G, or California Processors and Growers, but is an independent operator, and his contract, although carrying all the terms of this agreement, is directly between the Union and his cannery as an independent operator.

Mr. Kennedy: And an agreement was entered into, as I understand it, between the Union and Clara-Val that they would adopt this Union Exhibit No. 1 for identification as their contract.

Mr. Padway: That is correct.

Mr. Kennedy: So in effect, although it doesn't bear the name of Clara-Val, it is the contract that was in existence.

Mr. Padway: We have a separate agreement.

Mr. Kennedy: Yes.

You may or may not recall what I outlined previously about this contract, that it was either terminated or modified, and that it was your position that the provisions for membership as a condition of working were still in effect. Is that correct?

Mr. Giordano: That is correct. In other words, that is what I understood.

Mr. Kennedy: I may interrupt the train of thought here for just a moment to make a motion to correct two minor clerical errors in the Complaint. In the introduction there is an omission of the phrase "As amended" after "The National Labor Relations."

Mr. Padway: No objection.

Mr. Giordano: No objection.

Mr. Kennedy: And Paragraph VI of the Complaint, there is upon the last line the phrase "Section 8(a)(1)(A)." I make a motion to amend that by striking the last "A" from that section.

Is there objection to that?

Mr. Padway: No objection.

Mr. Giordano: No.

Mr. Kennedy: Like our previous agreement those motions will be reserved for the final approval by the Trial Examiner.

Mr. Padway: I understand all matters even as to the receipt of exhibits and so forth, will be left to the final approval of the Trial Examiner.

Mr. Kennedy: I might make a recapitulation which will probably include some small elements of argument in it. You might do that, too.

Mr. Padway: Why not reserve that until tomorrow?

Mr. Kennedy: The only reason I was doing it was, it would be very brief, for Mr. Giordano's benefit, since he is present here.

Mr. Padway: All right, go ahead.

Mr. Kennedy: I believe that so far the agreement has been indicated on the fact that Nora Stiers who is the charging party was an employee at Clara-Val Company and that the Clara-Val Company discharged her on the insistence of the Union, although at the time she had her dues paid up in the Union and there had not been a union shop election as provided for by the amended Act at the Clara-Val plant, and that at the time of her discharge there was in effect a contract between Local 679 and Clara-Val which contains the particular provisions which have been referred to and which are all contained in Union's Exhibit 1 for identification.

It is the position of the General Counsel that although Section 8(b)(1)(A) and specifically the proviso of 8(b)(1)(A) does not impair the right of a labor organization to prescribe its rules with respect to the acquisition or retention of membership, that there still is provided in the Act only one exception in which a Union can insist on the discharge of a person or employee, and that is when

the employee is discharged for nonpayment of dues after a union shop election as provided for in the Act.

And it is further contended that even though an employee can be disciplined by a union or discharged from a union that that is not inconsistent with continued employment at a plant as long as the employee still tenders the dues as provided in Section 8(a)(3).

With respect to the tenure of this particular agreement, it is believed that the substance of Section 15 of the agreement in effect between Local 679 and Clara-Val provided that there will be a renewal each year on the anniversary date as specified in subsection (b) of Section 15.

I believe that is largely a recapitulation of the facts that were presented before.

I would like, for the sake of the record, to get an indication of whether or not there is agreement on that, without necessarily implying that that is the whole story.

Mr. Padway: Well, I would like to state this for the record: I listened with a great deal of interest to counsel's recapitulation. Parts of it state accurately the record as it now stands. However, enhanced with these facts are counsel's opinion as to why——

Mr. Kennedy: Of course, I meant to strain the opinion, and I am not asking any acquiescence in that.

Mr. Padway: Counsel gives reasons why these

facts tend to indicate that there had been discrimination as against the moving party, Nora Stiers. In that, of course, we wholly disagree. It is our contention that the contract is a valid contract and is still in existence; that it had not been reopened; that there is nothing presently in the Act which would prohibit the contract from terminating, particularly in view of the expressed proviso in the contract which calls for notice being given by either both parties or either party, and that in view of the fact that the absolute facts are that no notice was given and that the contract remained in force and effect, it is our contention that Section 8(3), subsection (b) (1)(A) provides for the rights of labor organizations to prescribe their own rules for the acquisition and retention of membership, and that we contend that under that section of the statute we are entitled to proceed as we did proceed in the case of Nora Stiers, and that a distinct conflict exists at the present time in the Act between Section 8(3), subsection (A) and subsection 8(3)(5), subsection (b)(1)(A).

Mr. Kennedy: Do you wish to make any comments, Mr. Giordano?

Mr. Giordano: Well, I think that all the facts have been brought out rather clearly by both yourself and Mr. Padway, and I don't think I could add very much to it.

Mr. Kennedy: With respect to the facts surrounding the discharge.

Mr. Giordano: I would say this: That as they were presented, that is just about what happened. In other words, my employees, my plant Superintendent and Forelady brought the facts to me in my office and they asked me to give them advice as to what to do in this particular case. I didn't give them any decision for a little while there until I had an opportunity to discuss the subject matter with Mr. Ficarrota, and after he exlained to me what had happened and why they were requesting she be pulled off the job, and that also if we did not take her off the employment of the firm that they had no alternative but to use other means in getting us to remove her from employment, they went so far as to state that the other employees belonging to the Union would be pulled off the job until this thing was settled satisfactorily.

Mr. Kennedy: I believe that the record is clear as to the facts surrounding the discharge.

Mr. Giordano: I have nothing else to add to that.

All I can offer is factual matter such as sales and seniority position of the particular employee involved, and anything like that you may want or the Court may want from me. I will be more than happy to give you that, but I have no other facts to present.

Mr. Kennedy: I believe that we have covered it, Mr. Giordano, and it seems to me that as we have anticipated when we first started this, there is no disagreement on facts. We do have some differ-

ences of opinion as to the construction of sections of the Act, and the contract.

Mr. Giordano: I just want to go on the record and state this: I did not think at the time I was discriminating against any employee. That was based on the contention that we had an agreement with the Union and we were trying to live up to the terms and conditions of that agreement, and that agreement was in force at the time. In removing her off the job we were merely doing our part in abiding by the contractual terms of that agreement.

Mr. Kennedy: With respect to the factual matter I will indicate on the record my apology for mixing up arguments with my recapitulation of facts, but as to the facts of the discharge which we indicated assent to I think it would be in order if we stated as facts that we recognize them as have been stated, and they are stipulated for the record.

Mr. Padway: I stipulate.

Mr. Giordano: I stipulate.

* * *

Mr. Kennedy: We will join in the stipulation. That is all.

Received April 5, 1949.

[Endorsed]: No. 12630. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Clara-Val Packing Company and Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL., Respondents. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed July 31, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

12630

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

CLARA-VAL PACKING COMPANY and CANNERY WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION No. 679, AFL.,
Respondents.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to

the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. II, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Clara-Val Packing Company, Morgan Hill, California, hereinafter called Respondent Company, its officers, agents, successors, and assigns, and Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, hereinafter called the Respondent Union, its officers, representatives, and agents. The consolidated proceeding resulting in said order is known upon the records of the Board as "In the Matter of Clara-Val Packing Company and Nora E. Stiers, an individual; Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL and Nora E. Stiers, an individual," Cases Nos. 20-CA-117 and 20-CB-29, respectively.

In support of this petition the Board respectfully shows:

(1) The Respondent Company is a California corporation, engaged in business in the State of California and the Respondent Union is a labor organization transacting business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with

this Court herein, to which reference is hereby made, the Board on December 16, 1949, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent Company, its officers, agents, successors, and assigns, and to the Respondent Union, its officers, representatives, and agents. On December 27, 1949, the Board issued an order correcting its Decision and Order. The aforesaid order provides as follows:

Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby order that:

1. The Respondent, Clara-Val Packing Company, Morgan Hill, California, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Encouraging membership in Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, or in any other labor organization of its employees, by discharging any of its employees or discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(2) In any other manner interfering with, restraining, or coercing its employees in the right to refrain from exercising the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Offer to Nora E. Stiers immediate and full reinstatement to her former or a substantially equivalent position without prejudice to her seniority or other rights and privileges;

(2) Post at its plant at Morgan Hill, California, copies of the notice attached hereto as Appendix A.[8] Copies of said notice to be furnished by the Regional Director for the Twentieth Region shall, after being duly signed by the Respondent Company's representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that such notices are not altered, defaced, or covered by any other material;

(3) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from the date of this Decision and Order, what steps the Respondent Company has taken to comply herewith.

2. The Respondent, Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No.

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[8]In the event this order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words: "A Decision and Order" the words: "A Decree of the United States Court of Appeals Enforcing."

679, AFL, its officers, representatives and agents, shall:

(a) Cease and desist from:

(1) Causing, by threatening strike action Clara-Val Packing Company, its officers, agents, successors, or assigns, to discharge or otherwise discriminate against employees because they are not members in good standing in Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, except in accordance with Section 8 (a) (3) of the Act;

(2) In any other manner causing or attempting to cause Clara-Val Packing Company, its officers, agents, successors or assigns, to discriminate against its employees in violation of Section 8 (a) (3) of the Act:

(3) Restraining or coercing employees of Clara-Val Packing Company, its successors, or assigns, in the exercise of their right to refrain from any or all of the concerted activities guaranteed by Section 7.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Post at its offices, if any, at Morgan Hill, California, and wherever notices to its members are customarily posted, copies of the notice attached hereto as Appendix B.[9] Copies of said notice, to be furnished by the Regional Director for the Twen-

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[9]In the event this order is enforced by decree of a United States Court of Appeals, there shall be

tieth Region shall, after being duly signed by the Respondent Union's representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced, or covered by any other material;

(2) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Decision and Order, what steps it has taken to comply herewith.

3. Clara-Val Packing Company, its officers, agents, successors, and assigns, and Cannery Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 679, AFL, its officers, representatives, and agents, shall jointly and severally make whole Nora E. Stiers for any loss of pay she may have suffered because of the discrimination against her, by payment to her of a sum of money equal to the amount she normally would have earned as wages from June 24, 1948, the date she was discriminatorily discharged, to the date of the Respondent Company's offer of reinstatement, less her net earnings during said period.

(3) The Board's Decision and Order, also order correcting Decision and Order were served upon

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inserted before the words: "A Decision and Order" the words: "A Decree of the United States Court of Appeals Enforcing."

Respondents on December 16 and 27, 1949, respectively, by sending copies thereof postpaid, bearing Government frank, by registered mail to Respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring the Respondent Company, it officers, agents, successors, and assigns, and the Respondent Union, its officers, representatives, and agents, to comply therewith.

NATIONAL LABOR
RELATIONS BOARD,
By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C. this 26th day of July, 1950.

[Endorsed]: Filed July 31, 1950.

ORDER

Case No. 12630

United States of America—ss.
The President of the United States of America

To Mr. Vincent C. Giordano, Clara-Val Packing Company, Morgan Hill, California, Cannery Warehousemen, Food Processors, Drivers & Helpers, Local Union No. 679, AFL., 288 W. Santa Clara St., San Jose, Calif.,

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 31st day of July, 1950, a petition of the National Labor Relations Board for enforcement of its order entered on December 16, 1940, in a proceeding known upon the records of the said Board as

> "In the Matter of Clara-Val Packing Co., and Nora E. Stiers, an individual, Case No. 20-CA-117, and Cannery Warehousemen, Ford Processors, Drivers and Helpers, Local Union No. 679, AFL., and Nora E. Stiers, an individual, Case No. 20-CB-29,"

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the

Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 31st day of July, in the year of Our Lord one thousand nine hundred and fifty.

[Seal]: /s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

Returns on service of Writ attached.

Received August 7, 1950.

[Endorsed]: Filed August 17, 1950.